

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Peter J. DEVRIES *et al.*

Examiner: Xiaozhen XIE, Ph.D.

Serial No.: 10/684,109

Group Art Unit No.: 1646

Filing Date: October 10, 2003

Confirmation No. : 5090

For:

ERYTHROPOIETIN RECEPTOR BINDING ANTIBODIES

**DECLARATION AS TO A DEPOSIT MADE UNDER THE BUDAPEST TREATY**

1. I, Dianne Casuto, am the attorney-of-record in the above-mentioned pending U.S. Patent Application No. 10/684,109 entitled, "Erythropoietin Receptor Binding Antibodies" which was filed on October 10, 2003 in the United States Patent and Trademark Office;

2. A cell line expressing Ab12 has been deposited pursuant to the Budapest Treaty at the American Type Culture Collection, 10801 University Blvd., Manassas, Virginia 20110-2209;

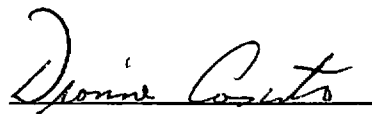
3. This deposit meets the criteria set forth in 37 C.F.R. Sections 1.801-1.809. The deposit was made on October 1, 2003 and received ATCC Accession No. PTA-5554;

4. This cell line will be available during the pendency of the above-identified patent application to one determined by the Commissioner of Patents and Trademarks to be entitled thereto under 37 C.F.R. Section 1.14 and 35 U.S.C. Section 122;

5. Upon issuance of a patent on the above-identified application, all restrictions as to public availability of this cell line will be irrevocably and without restriction or condition removed and said cell line will be replaced should the depository be unable to distribute the sample upon a proper request, during the period that extends thirty years from the date of deposit, or the period of the enforceable life of the patent, or the period of five years after the last public request for the deposit, whichever period is longest. However, it is to be understood that the availability of this cell

line does not constitute a license to practice the subject invention in derogation of patent rights granted by governmental action; and

6. I declare further that all statements made on information and belief are believed to be true, and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and such willful false statements may jeopardize the validity of the instant patent specification or patent issuing thereon.

  
Dianne Casuto  
Attorney for the Applicants